

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BRETT MCCLAFFERTY,)	CASE NO.: 5:19-CV-2219
)	
Plaintiff,)	JUDGE: BENITA PEARSON
)	
vs.)	<u>PORTAGE COUNTY DEFENDANTS'</u>
)	<u>MOTION FOR PROTECTIVE ORDER</u>
PORTAGE COUNTY BOARD OF)	<u>AND MOTION TO STRIKE</u>
COMMISSIONERS, et al.,)	
)	
Defendants.)	

Now come Defendants, Portage County Board of Commissioners, David W. Doak, Dale Kelly, Daniel Burns, Bryan Morgenstern, William Burns, Cory Germani, Michael Burda, and Amy Beans (the “Portage County Defendants”), by and through counsel, Mazanec, Raskin & Ryder Co., L.P.A., and hereby move the Court for: (1) a protective order preventing Plaintiff Brett McClafferty from communicating directly with represented parties on matters concerning this lawsuit; and (2) an order striking McClafferty’s Notice (ECF #65) from the record.

On August 19, 2020, McClafferty filed a notice that he had made an unsolicited settlement demand to Portage County Commissioner Vicki Kline by letter dated August 13, 2020.¹ In that letter, McClafferty offered to settle his fraudulent claims against the Portage County Defendants -and dismiss his claims against the other defendants -- if Portage County will meet his terms. The Portage County Defendants take issue with this notice for at least two reasons.²

¹ Commissioner Kline did not receive that letter until August 25, 2020.

² There is a third reason. Demanding any consideration to settle a fraudulent claim is extortion.

First, in her capacity as a county commissioner, Ms. Kline is a represented party. McClafferty should not be communicating directly with any represented party about his lawsuit.³ It makes no difference that he is an unrepresented, *pro se* plaintiff. *Gaines-Hanna v. Farmington Pub. Sch. Dist.*, No. 04-CV-74910-DT, 2006 WL 891434, at *1 (E.D. Mich. Mar. 31, 2006)(“Although plaintiff, as a non-attorney, is not technically bound by the Rules of Professional Conduct, in [his] capacity as a *pro se* plaintiff []he is nevertheless required to refrain from directly contacting the named defendants in accordance with Rule 4.2.”); *Channing v. Equifax, Inc.*, No. 5:11-CV-293-FL, 2011 WL 13239096, at *1 (E.D.N.C. Oct. 27, 2011) (“Though plaintiff proceeds *pro se*, he is still bound by the same rules of court and procedure that a lawyer must follow. Rule 4.2 of the Model Rules of Professional Conduct prohibits an attorney from contacting a represented party. Contacting represented parties directly, rather than through counsel, is strictly forbidden.”).

Second, if McClafferty wishes to make an unsolicited settlement demand, he should do so off the record. McClafferty made his demand public because he is still trying to create and control the narrative from prison, even while the evidence is stacking up against him. He should not be permitted to abuse the Court’s docket by filing his own impertinent and self-serving correspondence that insults defense counsel and intentionally misrepresents the state of the evidence.

For these reasons, the Portage County Defendants respectfully request that the Court strike McClafferty’s Notice (ECF #65) from the docket and issue a protective order preventing him from communicating directly with represented parties. The Portage County Defendants further request

an express warning to McClafferty that his violation of the protective order will result in sanctions, up to and including dismissal of his case with prejudice.

Respectfully submitted,

MAZANEC, RASKIN & RYDER CO., L.P.A.

s/Kathleen M. Minahan

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CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2020, a copy of the foregoing Defendants' Motion for Protective Order and Motion to Strike was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Notice has also been sent by depositing same in first-class United States mail, postage prepaid, to the following:

Brett McClafferty
#750839
c/o CoreCivic
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Conneaut, OH 44030
Pro Se Plaintiff

s/Kathleen M. Minahan

TODD M. RASKIN (0003625)

KATHLEEN M. MINAHAN (0064989)

Counsel for Defendants Portage County Board of Commissioners, David W. Doak, Dale Kelly, Daniel Burns, Bryan Morgenstern, William Burns, Cory Germani, Michael Burda, and Amy Beans

CORSA-190278/Ds Mtn for Order